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IN THE
Supreme Court of the United States

OCTOBER TERM, 1940

No. 1073

96

THE PEOPLE OF PUERTO RICO,
Petitioner,

vs.

RUBERT HERMANOS, INC., *et al.*,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT
OF APPEALS, FIRST CIRCUIT, AND SUPPORTING BRIEF

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**PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT
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*To the Honorable, the Chief Justice, and the Associate
Justices of the Supreme Court of the United States:*

Petitioner, The People of Puerto Rico, prays a writ of certiorari to review the judgment of the Circuit Court of Appeals for the First Circuit, March 31, 1941 [not yet appearing in the Federal Reporter], vacating the order of the Supreme Court of Puerto Rico, July 26, 1940 (R. 127-130), which had appointed a Receiver for the respondent corporation Rubert Hermanos, Inc.

QUESTIONS PRESENTED

FIRST: Did the Supreme Court of Puerto Rico possess the power or jurisdiction to appoint the Receiver?

SECOND: Assuming that the insular Supreme Court possessed the jurisdiction to do so, did it err in making the appointment? Was the appointment so "improvident" as to require, or justify, reversal by the Circuit Court of Appeals, as "inescapably wrong"?

Petitioner believes that the first question should be answered in the affirmative, and the second question in the negative; that the insular Supreme Court possessed the jurisdiction and power to appoint the Receiver, and that it committed no error in so doing; that the appointment was both within the power and jurisdiction of that court, and was also a proper exercise of the court's power; and, in any event, surely not "inescapably wrong". The Circuit Court of Appeals did not pass directly upon the "*First*" question of the jurisdiction of the insular Supreme Court (although its opinion apparently implies jurisdiction in the insular court); but held, upon the "*Second*" question of the correctness of the insular court's action (R. 180),

"But the order appointing a receiver was, in our opinion, improvidently issued".

Petitioner believes, nevertheless, that *the question here presented on this branch of the case is in reality simply one of the jurisdiction of the insular court to appoint the Receiver*. No other substantial question was presented by the respondents as appellants in the Circuit Court of Appeals. ["Assignment of Errors," R. 131-135; "Statement on Appeal", R. 141-160]. No abuse of discretion is claimed. There is no suggestion that the Receiver is not a fit or competent person, or of any mismanagement, or threatened mismanagement by him. Nor any complaint that the receivership was too broad, or as to its covering personal property or equipment as well as the land. Nothing whatever of that kind. Respondents-appellants' contention in the Circuit Court of Appeals was, in effect, simply that the insular Supreme Court was without power to make the appointment.

STATEMENT OF THE CASE

This is the same case which was here as No. 582 at the October Term, 1939, of this Court, decided March 25, 1940, in which this Court, reversing the Circuit Court of

Appeals, affirmed the judgment of the insular Supreme Court forfeiting the charter of the corporation for violation of the statutes, federal and insular, and of its own articles of incorporation, forbidding it as an agricultural corporation of Puerto Rico to own and control more than 500 acres of land. *People of Puerto Rico v. Rubert Hermanos, Inc.*, 309 U. S. 543.

The present case is stated as follows in the opinion of the Circuit Court of Appeals. (MAGRUDER, J.; R. 170-182):

"MAGRUDER, J. Complaining now of an order by the Supreme Court of Puerto Rico appointing a receiver, Rubert Hermanos, Inc., brings this case here a second time. Joined as appellants are five individuals as trustees in liquidation of the corporation. A brief résumé of the earlier phase of the litigation will help toward an understanding of the issues raised in the present appeal:

"By Joint Resolution of May 1, 1900, 31 Stat. 715, Congress enacted that every agricultural corporation thereafter organized in Puerto Rico 'shall by its charter be restricted to the ownership and control of not to exceed five hundred acres of land.' This provision was continued in effect by the revised Organic Act, 39 Stat. 951, 965, 48 U.S.C. § 752.

"Rubert Hermanos, Inc., was organized under the laws of Puerto Rico in 1927, with articles of incorporation expressly containing the aforesaid restriction as to acreage. Notwithstanding the restriction, the corporation proceeded to acquire upwards of 12,000 acres of farming land in Puerto Rico.

"In 1935 the legislature of Puerto Rico passed Acts No. 33 and No. 47¹ to implement and add sanctions to the Congressional prohibition. The Supreme Court of Puerto Rico was by these Acts vested with the original jurisdiction of all *quo warranto* proceedings which might thereafter be instituted by the Government of Puerto Rico for violation of the 500-acre restriction.

"Several months after the passage of the latter

¹ Appendix, *infra*, pp. 43-45 [Quoted by the Court in its footnote "1", R. 171-173].

of these two Acts, and pursuant thereto, the People of Puerto Rico commenced *quo warranto* proceedings in the Supreme Court of Puerto Rico against Rubert Hermanos, Inc., praying the court to adjudge the corporate franchise to have been forfeited, to decree immediate dissolution of the corporation, to impose a proper fine, and for other relief.

"On July 30, 1938, the court gave judgment pronouncing that the defendant corporation was guilty of a violation of the aforesaid provision of the Joint Resolution and of its own articles of incorporation, and imposing a fine of \$3,000. In addition, the judgment read: 'The forfeiture and cancellation of the license of the defendant corporation and of its articles of incorporation is hereby ordered and decreed, as well as the immediate dissolution and winding up of the affairs of said corporation.'

"This judgment was reversed by us in *Rubert Hermanos, Inc. v. People of Puerto Rico*, 106 F. (2d) 754. In turn, we were reversed on certiorari, *Puerto Rico v. Rubert Hermanos, Inc.*, 309 U. S. 543, and the case was remanded to the Supreme Court of Puerto Rico for further proceedings not inconsistent with the opinion of the federal Supreme Court.

"Mr. Justice Frankfurter, speaking for the court, said that 'On the only questions now before us, we think the Supreme Court of Puerto Rico acted within the scope of power validly conferred upon it by the Legislative Assembly.' 309 U. S. at 550. But as the case was presented on that earlier appeal it is clear that the court did not have before it and did not intend to pass on the validity of so much of Act No. 47 as authorizes the People of Puerto Rico at its option, in the same *quo warranto* proceedings, to move for the confiscation² of unlawfully held farming land, or in the alternative, to move for the sale of such land at public auction. Nor was any question presented as

² The word "confiscation" has an unduly harsh connotation in this connection, because it is apparent from the statute that under this alternative the land is condemned by the People upon the payment of just compensation as provided in the Condemnation Proceedings Act. [Footnote "2" of Circuit Court of Appeals itself; R. 174.]

to the procedure by which the People of Puerto Rico might exercise this option, assuming its validity. These questions would only arise if the People should elect to proceed with a confiscation or a public sale; but no such election had been made when the case came up before. In all three courts, Rubert Hermanos, Inc., sought to challenge the provision in Act No. 47 for confiscation or public sale as being an *ex post facto* penalty invalid under the Organic Act, 48 U.S.C. § 737. Counsel for the insular government persuaded the courts not to pass on this issue by pointing out, correctly enough, that the People had not asked for confiscation or public sale. Obviously this did not estop the People from subsequently moving for a confiscation or public sale, in accordance with the procedure prescribed in Act No. 47. Appellee has not taken inconsistent positions. The contention of appellants to the contrary is without foundation.

"On May 13, 1940, the day on which the mandate of the United States Supreme Court was received by the clerk of the Supreme Court of Puerto Rico, appellee renewed a motion for the appointment of a receiver. This motion had originally been made on July 30, 1938, just after the judgment of dissolution was entered, but the Supreme Court of Puerto Rico held it in abeyance pending the outcome of an appeal from such judgment. The only ground for appointment of a receiver avowed in the motion was that 'Such dissolution and disposition of the property of the respondent shall be entrusted to a receiver.'

"The motion was opposed by the corporation on various grounds, the first being that 'The judgment of the court has been complied with. The corporation has been dissolved, its obligations have been extinguished and it has disposed of its properties by unanimous agreement of its stockholders and of the liquidators appearing herein.' It seems that this had been accomplished two or three days after the decision in *Puerto Rico v. Rubert Hermanos, Inc.*, 309 U.S. 543, was announced, March 25, 1940, by the simple expedient of transferring the properties of the corporation to a partnership composed of those who were its only stockholders.

"By the order now appealed from, issued July 26, 1940, the court appointed a receiver. Authority for such appointment was found by the court to be impliedly conferred by Act No. 47 on two grounds: First, it is said, authority to decree the dissolution and winding up of the corporation necessarily presupposes power in the court to enforce compliance with its commands; appointment of a receiver is an appropriate way for the court to supervise the liquidation. Second, it is said, a receivership is necessary to preserve the status quo, pending decision by the People of Puerto Rico whether to exercise their option to confiscate the excess lands or have them sold at public auction. The court also found authority to appoint a receiver in § 182, paragraph 4, of the Code of Civil Procedure.

STATUTES

The statutory provisions chiefly involved are indicated in the Brief in Support of this Petition (*infra*, p. 23), and are set out in the Appendix (*infra*, pp. 29-48).

OPINION OF THE CIRCUIT COURT OF APPEALS

The Circuit Court of Appeals (R. 170-182) holds:

FIRST. That the order appointing the Receiver was, in the present instance, an appealable "final decision" within the meaning of Section 128 (a) "Fourth" of the Judicial Code as amended by the Act of February 13, 1925; and, therefore, overrules the motion [R. 161-169] of The People of Puerto Rico [this petitioner, appellee there] to dismiss the appeal for want of jurisdiction (R. 176-178). It says (R. 177-178):

"A 'final decision' is not necessarily the ultimate judgment or decree completely closing up a proceeding. In the course of a proceeding there may be one or more final decisions on particular phases of the litigation, reserving other matters for future determination. See *Knox National Farm Loan Ass'n v. Phillips*, 300 U. S. 194, 197-98; *Trustees v. Greenough*, 105 U. S. 527; *Gay v. Hudson River Electric*

Power Co., 184 Fed. 689; *Dant & Russell v. Halstead Lumber Co.*, 103 F. (2d) 306. The words 'final decisions,' like the equivalent 'final judgments and decrees' in former acts regulating appellate jurisdiction, have not been understood in a strict and technical sense, but have been given a liberal and reasonable construction. *Forgay v. Conrad*, 6 How. 201, 203; *City of Eau Claire v. Payson*, 107 Fed. 552, 557."

SECOND. The opinion proceeds (R. 178):

"Coming to the merits, we do not find ourselves in full agreement with the contentions of either side."

THIRD. As to the principal contentions of the appellants there, *Rubert Hermanos, Inc.*, the corporation, and its directors claiming to be liquidating trustees [the respondents here], the Circuit Court of Appeals holds against them, and sustains the position of this petitioner, The People of Puerto Rico, which had been upheld by the insular Supreme Court (R. 121-125). The Circuit Court of Appeals holds that it will not disturb the insular Supreme Court's interpretation of the provision of Section 2 of the *Quo Warranto* Act as amended by Section 1 of Act No. 47 of the Special Session of 1935 (Appendix, *infra*, p. 44) that "The People of Puerto Rico may, at its option, through the same proceedings, institute in its behalf the confiscation³ of such property, or the alienation thereof at public auction, within a term of not more than six months counting from the date on which final sentence is rendered",

"as meaning that the People of Puerto Rico have six months after the judgment of dissolution becomes final within which to apply in the *quo warranto* proceedings for confiscation or sale at public auction; that this judgment did not become final until the mandate of the United States Supreme Court was re-

³ Really condemnation upon payment of just compensation. See footnote 2, *ante*, p. 4.

ceived by the clerk of the Supreme Court of Puerto Rico, on May 13, 1940, so that the option could be exercised at any time up to November 13, 1940. We think that this is a reasonable, perhaps the more reasonable, interpretation of the Act, and this being so, we accept the interpretation of a local statute made by the insular court."

In this connection the Circuit Court overrules (R. 178-179) the appellants' [respondents'] contention that there can be only one final judgment in the course of the *quo warranto* proceedings, and says (R. 179):

"There may be a final 'decree of nullity' upon the determination that the corporation has by its acts forfeited its charter; and if, thereafter, the People should elect to have the property sold at public auction there may, in the same proceedings, be a 'final judgment' ordering the sale and fixing 'the reasonable price to be paid for said property.' The *quo warranto* proceedings were not at an end with the final affirmance by the Supreme Court of the United States of the 'decree of nullity.' Indeed, the mandate of the Supreme Court of the United States remanded the case to the insular Supreme Court 'for further proceedings' which fairly would include any proceedings necessitated by subsequent exercise of the option."

FOURTH. The court overrules the appellants-respondents' contention [*Confer*, "Assignment of Errors", numbers 16 and 17, R. 134] that the option provision in Act No. 47 is invalid as "in the nature of an *ex post facto* penalty forbidden by the Organic Act", saying (R. 179):

"At the threshold of the argument it may be plausibly maintained that the provision is not a penalty at all but a remedial measure to undo the concentration of corporate land-holding brought about in violation of the public policy expressed in the Joint Resolution and in the territorial legislation. However this may be, and assuming, without deciding that the provision is a penalty, we still do not see that its application here is *ex post facto*. After Act No.

47 was passed, on August 7, 1935, the corporation continued to hold the forbidden acreage without taking any steps to dispose of the excess lands and without manifesting any intention to do so. Assuming that the corporation would have to be afforded a reasonable time after the passage of the Act to dispose of its holdings, before the so-called penalty of sale by public auction could lawfully be imposed, the corporation did have such reasonable time here, and did nothing about it."

FIFTH. The court concludes on this branch of the case (R. 180):

"We conclude that after the judgment of dissolution was finally affirmed it was still open to the People to exercise the option, and that the Supreme Court of Puerto Rico had jurisdiction in the continuing *quo warranto* proceedings to entertain and act on any subsequent application by the People in the exercise of the opinion within the six months' period."

SIXTH. The court then holds, however (R. 180):

"But the order appointing a receiver was, in our opinion, improvidently issued."

The court bases this decision on the following grounds (R. 180-182):

A. That (R. 180) Sections 27, 28 and 30 of the Private Corporations Law of Puerto Rico (Appendix, *infra*, pp. 41-42) indicate that

"The general statutory scheme contemplates that upon dissolution the directors as liquidating trustees shall proceed to wind up the affairs of the corporation. This is true however the corporation is dissolved, whether by voluntary act, expiration of time, or decree of forfeiture."

"The insular Supreme Court holds to the contrary, that these sections do not relate to a decree of forfeiture (R. 123-124, 124-127). *Confer, infra*, "Petitioner's Position", pp. 14-18.

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B. That (R. 181), as to Section 182 of the Code of Civil Procedure,⁵ relied upon by the insular Supreme Court:

"This does not mean, however, that in case of dissolution, even by forfeiture, a receiver must be appointed as a matter of course. It only preserves to the courts jurisdiction to supplant the statutory trustees upon proper showing by an interested party, agreeably to the usages of courts of equity." (*Italics supplied*)

C. That (R. 181) in the present case the Receiver "obviously was not appointed at the instance of, or to protect any imperilled interest of, either creditors or stockholders."

D. That The People of Puerto Rico does not have (R. 181) any "sufficient interest in the premises to justify the court in continuing the operation of the business through a receiver",

"for an indefinite period, when the owners of the corporation after its franchise has been forfeited want to wind up the corporate affairs and promptly proceed to do so."

E. That The People of Puerto Rico "do not need a receiver to protect the option" (R. 181-182). The court says (*ib*):

"All that remains to be done, so far as any interest of the People is concerned, is to protect the option given by Act No. 47. This option relates only to the

⁵ Providing that. (Appendix, *infra*, p. 46):

"A receiver may be appointed by the court in which an action is pending or has passed to judgment, or by the judge thereof: . . .

"4. In the case when a corporation has been dissolved, or is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights. (*Italics supplied*)

"5. In all other cases where receivers have heretofore been appointed by the usages of courts of equity."

disposition of the excess acreage of land, and has nothing to do with the other assets of the corporation of every kind and description, all of which the receiver is commanded to take into his possession by the order appealed from. The People do not need a receiver to protect the option. If and when the time comes for the court to decree a sale of the land at public auction a master can be appointed to carry through the sale. The land will still be there. Meantime, the interest of the People is protected by a *lis pendens* notice which was entered in the Registry of Property shortly after the institution of the *quo warranto* proceedings, which notice the corporation unsuccessfully sought to have cancelled."⁶

⁶ The Circuit Court of Appeals adds (R. 182):

"We are informed that on August 28, 1940, after the entry of the order appointing a receiver, the Attorney General on behalf of the People of Puerto Rico filed in the court below a motion or petition concluding as follows:

"Therefore, The People of Puerto Rico elects to have all the lands in the possession of the respondent sold at public auction, and prays this Court to order the sale at public auction of the said real property by the receiver already appointed by this Court, after the same is assessed in conformity with the provisions of the Condemnation Proceedings Act now in force."

"Appellant contends that Act No. 47, properly construed, confers no authority upon the Attorney General to exercise this option on behalf of the People, but requires the election to be made by legislative act. This question we do not pass on now, because the Supreme Court of Puerto Rico has had no occasion to consider it. The point may be presented to that court upon remand of the case."

While, as the Circuit Court of Appeals says, the question does not appear to be directly presented at this time, yet the option may be regarded as having been properly exercised by the insular government. Its exercise was not the making

PETITIONER'S POSITION

FIRST. Petitioner, The People of Puerto Rico, while still believ-

of a legislative rule; and was not, therefore, legislative in character. It was not a judicial act. It follows that it was an executive act; that it falls within the scope "*of the remaining one of the three among which the powers of government are divided*", that is, the executive power. *Springer vs. Philippine Islands*, 277 U. S. 189, 202-203. The "supreme executive power" in Puerto Rico is in the Governor (Organic Act, Sec. 12; 39 Stat. 951, 955). The Attorney General is one of his assistants; is the head of an executive department; is in charge of the administration of justice in Puerto Rico, and the legal adviser to the Governor, "and shall be responsible for the proper representation of the people of Porto Rico or its duly constituted officers in all actions and proceedings, civil or criminal in the Supreme Court of Porto Rico" (*ib.*, Secs. 13, 14; 39 Stat. at 955, 956). He has represented the government as its counsel in the insular Supreme Court throughout these proceedings. As such counsel he officially filed there the motion or petition above quoted by the Circuit Court of Appeals, officially advising the insular Court that The People of Puerto Rico has exercised the option and "elects to have all the lands in the possession of the respondent—[corporation] "sold at public auction", and asks an order for the sale. If there can possibly be any question of this having been done in conformity with the wishes of the Governor, "the supreme executive authority", then the action of the Attorney General can readily be formally ratified by the Governor, on the established principles of agency, in like manner as a legislative act by an inferior legislature may be ratified by the superior legislative power. *United States vs. Heinszen & Co.*, 206 U. S. 370; *Rafferty v. Smith, Bell & Co.*, 257 U. S. 226; *Porto Rico Brokerage Co. v. United States*, 80 F. (2d) 521, 524 (C.C.A.-1; certiorari denied, 298 U. S. 671).

ing that the order appointing the Receiver was interlocutory only, and was not an appealable "final decision", is not disposed to insist upon this point, considering it in the public interest that other important questions presented on this record be settled by this Court at this time.

SECOND. The Circuit Court of Appeals was right, in its decisions upon the basic questions of substantive law here involved [R. 178-180; "Third", "Fourth", and "Fifth", *ante*, pp. 7-9] that:

(A) The provision of Act No. 47 giving The People of Puerto Rico a six months option after final judgment of ouster in *quo warranto* proceedings, is valid;

(B) The People's option ran six months from the date of such "final judgment"; that is to say, for six months from May 13, 1940, the date when the mandate of this Court on the former hearing was filed in the insular Supreme Court,—[so that it ran until November 13, 1940]; and, consequently,

(C) The option was in force on the date of the order of the insular court appointing the receiver, July 26, 1940,—and thereafter until November 13;⁷

(D) The Supreme Court of Puerto Rico had jurisdiction in the continuing *quo warranto* proceedings to entertain and to act on any application by the People in the exercise of the option within such six months period; and

(E) The exercise of the option and the application of the provisions of Act No. 47 in this case is not the application of any *ex post facto* penalty.

THIRD. But the Circuit Court of Appeals was clearly wrong

⁷ Within which time it was actually exercised, on August 28, 1940, by the insular government's petition to the insular Supreme Court to order a sale of the property at auction [Opinion, Circuit Court of Appeals, R. 182; *ante*, footnote 6, pp. 11-12].

in holding that the order of the insular Supreme Court appointing the Receiver was "improvidently" issued. In so holding, the Circuit Court overlooked essential factors.

A. The Circuit Court in its discussion of this branch of the case apparently overlooked the fact that the insular Supreme Court, in determining to appoint the Receiver, was interpreting and applying local statutes in the light of its knowledge of local conditions and business practices; that no "federal question" is in any respect involved in this branch of the case; and that it is, therefore, peculiarly a case for the application of the often repeated rule of this Court as to the respect to be accorded to a decision of a local Territorial Supreme Court under such circumstances,—that its decision is not to be overruled unless "inescapably wrong" (*Sancho Bonet, Treasurer v. Texas Co.*, 308 U. S. 463, 471; *Sancho Bonet, Treasurer v. Yabucoa Sugar Co.*, 306 U. S. 505, 509-511). Apparently, so far as appears from the opinion, the Circuit Court of Appeals was not applying this established rule in considering this branch of the case, but was arriving at its decision on this point independently of this rule.

B. In holding that under Sections 27, 28, 29, and 30 of the insular Private Corporations Law (Appendix, *infra*, pp. 41-42), "The implication is unmistakable that whatever the mode of dissolution, the directors automatically succeed as liquidating trustees", and in overruling the contrary interpretation of the insular Supreme Court as to cases like the present where the corporation's charter has been ordered forfeited in *quo warranto* proceedings, the Circuit Court does not make any analysis of the exact language of the insular statutes, and overlooks the fact that in view of the language of the preceding Section 26 relating to "dissolution" ["Whenever in the judgment of the board of directors it shall be deemed advisable"], the apparently broader language of the succeeding Section 27 relating to "All corporations, whether they expire through the limitation contained in articles

of incorporation or are annulled by the legislature, or otherwise dissolved", and of the next succeeding Section 28 relating to "*the dissolution in any manner of a corporation*" [*Italics supplied*], may very well and reasonably be construed, as the insular Supreme Court does construe them in its opinion (R. 123-127),⁸ as meaning to use the words "dissolved", "dissolution", in Sections 27, 28, 30, 32 and 33 of the same "Article VI" entitled "Dissolution", of the Private Corporations Law, in the same sense in which the word "dissolved" is used in the immediately preceding Section 26, which is the first section of that Article.⁹ That is to say that those words, "dissolved", "dissolution", wherever used throughout that Article VI of the statute [Secs. 26-33, inclusive], mean the same thing defined in the first section [Sec. 26]; viz., voluntary dissolution in any manner, "Whenever in the judgment of the board of directors it shall be deemed advisable that a corporation organized under this act shall be dissolved"; but to mean only cases falling within that category.

C. This is emphasized by the fact that the immediately following section [Sec. 27] expressly recognizes two other categories; viz., those cases where (1) the charter expires through limitation contained in the articles of incorpora-

⁸ And as the Court of Civil Appeals of Texas likewise construed very similar statutes of that State, in the case quoted (R. 125-126) by the insular Supreme Court: *San Antonio Gas Co. vs. State*, 22 Texas Civ. App. 118; 54 S.W. 289, 293, 294, construing Art. 682, Sayles Rev. Civ. Stat., in connection with Sec. 3, Art. 1465, *ibid* (writ of error denied by the Texas Supreme Court, 55 S. W. XVI).

⁹ *Confer, Talbott v. Silver Bow County*, 139 U. S. 438, 443-444, that when a word or phrase has once been used in the first [or an earlier] section of a statute with a defined meaning, it is to be presumed that when it is used again in a later section or sections of the same statute, without further definition, it is intended to be used with the same meaning as in the first section.

tion, or where (2) it is *annulled by the Legislature*; as well as where (3) it is "otherwise dissolved" [*that is, "dissolved" in accordance with the preceding Section 26*].

B. The distinction is further pointedly recognized by the fact that the Legislature, in Section 182 of the Code of Civil Procedure [the first section of "Chapter III.—Receivers"],¹⁰ in enumerating the cases in which a receiver may be appointed "*by the court in which an action is pending or has passed to judgment*", provides in its Paragraph "4" [Appendix, *infra*, p. 46] *four distinct categories*; viz.; [1]. "*when a corporation has been dissolved*"; [2] when it "*is insolvent*"; [3] when it is "*in imminent danger of insolvency*"; or [4] when it "*has forfeited its corporate rights*".¹¹

E. It follows that the insular Supreme Court was right in holding (R. 123-127, *supra*)¹² that the Legislature intended the provision for the case where a corporation "*has forfeited its corporate rights*" [Sec. 182 of the Code of Civil Procedure] to refer to something other and different from the "*dissolution*" contemplated in Section 26 and the following sections of the Private Corporations Law; that, therefore, the provision in Sections 27 and 28 and the succeeding sections of the Private Corporations Law concerning the qualified continuance of the corporate existence after "*dissolution*" under that Law, and for the directors continuing to act as "*liquidating trustees*", have no reference at all to a case where [as here] the corporation "*has forfeited its*

¹⁰ Analogous to Section 3, Article 1465, of the Texas Code. *San Antonio Gas Co. vs. State*, *supra*, 22 Tex. Civ. App. 118, 54 S.W. 289, 293-294; *ante*, Foot-note 8, p. 15.

¹¹ As well as the general provision in Paragraph "5" of the same Section, of "*all other cases where receivers have heretofore been appointed by the usages of courts of equity*".

¹² In agreement with the Texas Court in the *San Antonio Gas Co.* case. Confer footnote 8, *ante*, p. 15.

corporate rights"; and that in the latter event a receiver may therefore "be appointed by the court in which an action is pending or has passed to judgment" under Section 182 of the Code of Civil Procedure.

F. As we have said, it is believed plain that this holding of the insular Supreme Court, thus construing these two local statutes together, was right. At any rate it is surely not an unreasonable interpretation of the local laws. It is very surely not "patently erroneous"; nor "inescapably wrong" (*Sancho Bonet, Treasurer v. Texas Co.*, *supra*, 308 U. S. 463, 471); and therefore should not have been disturbed by the Circuit Court of Appeals.

G. The Supreme Court of Puerto Rico was not bound by the decision of the Supreme Court of California cited by the Circuit Court of Appeals (R. 180, 181) interpreting the California statute [*Havemeyer vs. Superior Court*, 84 Cal. 327; 24 Pac. 121]; which the insular Supreme Court likewise cited in its opinion (R. 126) and expressly declined to follow. The statutes of Puerto Rico are not taken quite literally from those of California. There are material differences. Especially there is no provision in the California codes or statutes analogous to that in the amendment made to the Puerto Rico *Quo Warranto* Law by Act No. 47 of 1935, here involved, expressly giving The People of Puerto Rico an option upon the corporate property, upon judgment of forfeiture of the corporate franchise for violation of the laws, as in the case here at bar. Nothing of that kind was before the court in the *Havemeyer* case in California. Moreover, that was a case where the question arose really "after judgment", the prior proceedings having been entirely terminated; whereas here the Circuit Court of Appeals agrees with the insular Supreme Court (R. 178-180; *ante*, pp. 7-8) that the *quo warranto* proceedings were not finally terminated by the judgment of forfeiture of the corporate franchise, but were still pending, the parties still before the insular Supreme Court, and sub-

jeet to its jurisdiction; and that it has power in these proceedings to enforce the government option under Act No. 47.

H. In any event, reading the statutes together, the result is that, at the very least, they unquestionably, as the Circuit Court of Appeals itself holds, preserve (R. 181), "to the courts jurisdiction to supplant the statutory trustees upon proper showing by an interested party, agreeably to the usages of courts of equity."

I. There existed in this case ample grounds, agreeably to the usages of the courts of equity, for the intervention of the insular Supreme Court and the appointment of the Receiver. The Circuit Court of Appeals here again overlooks significant factors.

J. Courts of equity intervene and may appoint a receiver to protect and care for property in cases of **abdication by trustees** of their office or duties, and likewise in cases where trustees [or mortgagors or vendors remaining in possession of the property or others in positions of trust or *quasi trust*] **attempt to convey the property to third parties or otherwise to encumber the title, or to evade the jurisdiction of the court.** All of those grounds existed here:

(a) The corporation officers, before the filing of the mandate of this Court in the insular Supreme Court, and, therefore, before the judgment of dissolution had become legally effective there, but while the motion for the appointment of the Receiver made nearly two years earlier on July 30, 1938 (R. 16) was still pending undetermined,—having been held in abeyance during the pendency of the former appeal,—attempted to convey the property to third parties beyond the jurisdiction of the court. [That is to say, to a newly formed partnership composed of those same officers and directors and the stockholders of the corporation themselves, but claiming to take and hold the property in their individual capacities, and not in any way in trust for the corporation, or as liquidating trustees].

(b) Such conveyance (or attempted conveyance) was

not only in defiance of the then pending motion for the appointment of a receiver, and in effect an attempt to evade the jurisdiction of the court while the motion was pending; but it was also an

(c) Abdication, or an attempt to abdicate the trust under which the directors (*whether in their capacity as directors or in the capacity of "liquidating trustees"*) were bound to hold the property to respond to the government's six months option to condemn it or to order its sale at public auction under Act. No. 47 of 1935,—an option which the Circuit Court of Appeals itself expressly holds valid.

K. It is not a sufficient answer to say, as does the Circuit Court of Appeals (R. 182), that *lis pendens* notices were on file; or that (R. 182) the option would still be enforceable in an action against the purchaser, that the purchasers would necessarily take the property subject to the government's rights. *It has never been a sufficient answer to an abdication or breach of trust by encumbering property or attempting to convey it away that there still remained a right of action in the rightful owner to go out and recover it; or to attempt to do so in extended litigation with third parties.*

L. In view of this abdication of their duty by the trustees, the Circuit Court of Appeals was plainly wrong in holding (R. 181-182) that, "The People do not need a receiver to protect the option". At the very least, the decision of the insular Supreme Court, that it was proper to appoint a Receiver under those circumstances, was surely not "inescapably wrong".

M. And there appears to be no real basis for the Circuit Court of Appeals' criticism (R. 175, 181) of the receivership as covering other property besides the "excess acreage" on which that Court says (R. 181) The People held the option. But the statute, Act No. 47, gives the option on all the "real property" of the corporation

(Appendix, *infra*, pp. 44, 45¹³), not simply on "excess acreage".

This is a great sugar mill property,—land, mill and equipment. It had been integrated by the action [wrongful and illegal as it was] of the corporation itself. Under the laws of Puerto Rico the mill and the equipment constitute a part of the realty [the "immovables"], Civil Code, Sec. 263; Appendix, *infra*, pp. 47-48.

This Court will take judicial notice of ordinary business conditions; that it would be destructive of the entire property to separate the land from the equipment, by appointing a receiver to hold the land idle without allowing him to use the equipment or to cultivate the land. In Puerto Rico the land would quickly go back to jungle. Its value as sugar land would very rapidly deteriorate; and the mill and equipment standing idle would be useless, and likewise deteriorate. Respondents themselves have nowhere, either in their Assignment or Errors (R. 131-135) or in their "Statement on Appeal" (R. 141-160), even suggested any criticism of the scope of the receivership order, on this ground. Manifestly, if there was to be a receiver at all, then everyone familiar with the local conditions and the way the sugar business is carried on would agree that the receivership should cover the entire property, and that the property should be kept up as a live business property, until the time comes for its final disposition, however that may be done. The Circuit Court of Appeals' criticism of the width of the receivership, on this score, is not based upon any complaint made by the respondent corporation or its officers; but is, on the contrary, it may be suggested, in itself an apt illustration of the wisdom of the established rule of this Court as to the deference to be accorded to decisions of local Territorial courts of last resort, familiar with local conditions.

¹³ Spanish "*bienes inmuebles*" (Laws of Puerto Rico, Special Session, 1935, pp. 533, 535); *id. est.*, "immovables."

in interpreting and applying local statutes and in the exercise of discretion in local matters.

REASONS FOR GRANTING THE WRIT

This case involves a question of federal law of paramount importance to the Government and the people of Puerto Rico. The decision of the Circuit Court of Appeals is believed to be wrong and to be in conflict with the applicable decisions of this Court, particularly with those in *Sancho Bonet, Treasurer of Puerto Rico vs. Texas Company, supra*, 308 U. S. 463, 3-472, and in *Sancho Bonet, Treasurer vs. Yabucoa Sugar Co., supra*, 306 U. S. 505, 509-511, in overruling a decision of the insular Supreme Court which was surely not "inescapably wrong" nor "patently erroneous"; interpreting and applying local statutes and exercising its sound judicial discretion in the appointment of a receiver under local statutes and in view of the local court's knowledge of local conditions and local business practices. The decision of the Circuit Court of Appeals that The People of Puerto Rico do not have a sufficient interest under the option given them by the local Act No. 47 of 1935 to justify the appointment of the Receiver and "do not need a receiver to protect the option" very seriously interferes with carrying into effect the legislative policy of the Congress and of the Legislature, of which this Court said when this case was here on the former hearing (*People of Puerto Rico v. Rubert Hermanos, Inc.*, 309 U. S. 543, 548):

"This policy was born of the special needs of a congested population largely dependent upon the land for its livelihood. It was enunciated as soon as Congress became responsible for the welfare of the Island's people, was retained against vigorous attempts to modify it, and was reaffirmed when Congress enlarged Puerto Rico's powers of self-government. Surely Congress meant its action to have significance beyond mere empty words. • • We refuse to believe that Congress was bent on the elaborate futility of a *brutum fulmen*."

It is, therefore, respectfully requested that this petition for a writ of certiorari be granted.

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Attorney General of Puerto Rico,

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BRIEF IN SUPPORT OF PETITION

Opinions Below

The opinion of the Supreme Court of Puerto Rico, July 26, 1940 (R. 120-127); is not yet officially reported. The opinion of the Circuit Court of Appeals, March 31, 1941 (R. 170-182) has not yet appeared in the Federal Reporter.

The earlier opinion of the insular Supreme Court, upon which the judgment of forfeiture of the corporation charter was entered July 30, 1938, is found on pages 285 to 304 of the transcript of the record filed in this Court in case No. 582 here at the October Term, 1939, and is officially reported in 53 P. R. Dec. 779 (*Spanish edition, Advance Sheets*), but has not yet appeared in the English edition of the Puerto Rico Reports. The opinion of the Circuit Court of Appeals, September 27, 1939, upon the appeal from that earlier judgment (*majority and minority opinions*) is reported in 106 F. (2d) 754. The opinion of this Court reversing the Circuit Court of Appeals, March 25, 1940, is reported as *Puerto Rico vs. Rubert Hermanos, Inc.*, 309 U. S. 543.

Jurisdiction

The jurisdiction of this Court is invoked under Sec-

tion 240 (a) of the Judicial Code of the United States, as amended by the Act of February 13, 1925, c. 239, 43 Stat. 938.

The judgment of the Circuit Court of Appeals was entered March 31, 1941 (R. 183).

Questions Presented

The questions presented are stated in the Petition (*ante*, pp. 1-2).

Statutes Involved

Primarily these are:

(1) The provisions of Sections 2 and 6 of the *Quo Warranto* Law of Puerto Rico as amended by Sections 1 and 2 of Act No. 47 of the Special Session of 1935 of the Legislature of Puerto Rico, concerning the six months option thereby given the People of Puerto Rico, upon judgment of forfeiture in *quo warranto* proceedings against a corporation found guilty of unlawfully holding real estate, to condemn¹⁴ the property or to order it sold at public auction.

(2) The provisions of Article VI, "Dissolution" (Sections 26-33), of the Private Corporations Law of Puerto Rico.

(3) The provisions of Section 182, Chapter III, "Receivers" of Title VIII of the Code of Civil Procedure of Puerto Rico.

(4) The definition of real property, "immovables", in Section 263, in Chapter I, Title I, of "Book Second" of the Civil Code of Puerto Rico.

These, with other pertinent statutory provisions, are in the Appendix, *infra*, pp. 29-48.

Statement

A statement of the case is in the Petition (*ante*, pp. 2-6).

¹⁴ "Confiscate", but only upon payment of compensation; as in ordinary condemnation proceedings. *Confer* foot-note 2, *ante*, p. 4.

Specification of Errors To Be Urged

These are indicated under the headings "Questions Presented" and "Petitioner's Position" in the Petition (*ante*, pp. 1-2 and 12-21).

Summary of Argument

The gist of the argument is contained in the Petition under the heading "Petitioner's Position" (*ante*, pp. 12-21), and is outlined in the "Subject-Index" preceding the Petition (*ante*, p. i).

ARGUMENT

The gist of the argument as stated in the Petition ("Petitioner's Position," *ante*, pp. 12-21) is not here repeated. What here follows relates to some of the specific points in it.

POINT I

The insular Supreme Court was clearly right in holding that Article VI, "Dissolution", Sections 26-33, of the Private Corporations Law of Puerto Rico has no reference to the forfeiture of corporate charters in *quo warranto* proceedings.

A. This holding of the insular Supreme Court (R. 123-126) is clearly supported by the cases there cited, as well as by an analysis of the phraseology of the statutes (*Confer*, "Petitioner's Position", Petition, *ante*, pp. 14-18).

B. Under Subdivision 5 of Section 182 of the Code of Civil Procedure of Puerto Rico (Appendix, *infra*, p. 46) the insular Court possessed the "*inherent power*", in accordance with "*the usages of courts of equity*", to appoint the Receiver *on its own motion*, to protect the property and preserve the rights of all the interested parties [including The People of Puerto Rico under its statutory option].

An almost identical statute has been so construed in Idaho and in Montana. *Gibbs vs. Morgan*, 9 Idaho 100, 111-114, 112 (72 Pac. 733, 737), under an almost identical provision of Subdivision 6 of Section 4329 of the Revised

Statutes of Idaho; citing and following the decision of the Supreme Court of Montana "under a statute identical with Subd. 6 of Idaho Sec. 4329" in *State vs. Second Judicial Circuit*, 15 Mont. 324 [39 Pac. 316; 48 Am. State Rep. 682; 27 L. R. A. 392].

POINT II

The officers and directors of the corporation abdicated their trust.

A. This is true, whether they are to be viewed in the light of directors and officers of the corporation, or as "liquidating trustees".

B. They themselves reveal that after the former decision of this Court, May 25, 1940, and before this Court's mandate could reach the insular Supreme Court, and while (1) the motion for the appointment of a receiver which had been made in the insular Supreme Court on July 30, 1938 (R. 16-17, the same day that the original judgment of forfeiture had been entered in that court) was still pending undetermined,—having been held in abeyance there (R. 17) awaiting the decision of the appeal from that judgment,—and also (2) while the property of the corporation in their control, in their trust capacity as its officers and directors, was subject to the statutory option under Act 47, definitely fixed by this Court's affirmance on March 25, 1940 of the insular Court's judgment of forfeiture,—they abdicated their trust by conveying [or attempting to convey] the entire property, free and clear of the trust, to third parties,—that is to say, to themselves as the members of a "partnership" which they formed for that purpose, [Opinion, C.C.A., R. 175; ante, p. 5],—and thereby attempted to repudiate their duties as trustees, and to take the trust property for themselves.

C. It is immaterial whether at that time they considered themselves, or attempted to act, as officers and directors of the corporation, or as "liquidating trustees". In either event their trust capacity was the same. They were bound to hold the property subject, first, to the juris-

diction of the court in the pending proceeding, and, particularly, during the pendency of the undecided motion for a receiver; and, *second*, subject to the statutory option given by Act No. 47 [which the Circuit Court of Appeals agrees with the insular Supreme Court was a valid existing option].

D. That statutory option bound the officers and the directors of the corporation just as much as though it had been granted by a deed or other voluntary instrument executed by the officers upon the authority or direction of the directors themselves. Under the statutory option the government was in substantially the same position as a vendee of the property, so far as the trust relation of the corporation's officers [and of its "liquidating trustees", if they ever actually became such] was concerned.

POINT III

Abdication of the trust is ground for the appointment of a Receiver.

A. This is too well established to require citation of authorities. A vendee, mortgagee, or other *cestui que trust* is not bound to fold his hands and see the trustee abdicate his trust, or convey the trust property away [or attempt to do so], and simply be remitted to his action for damages, or his attempt to recover the property from third parties in extended, and probably costly, litigation.¹⁵

B. The People of Puerto Rico, under its statutory option, had the same right here. It is manifest that to offer the land for sale at auction, as the Circuit Court of Appeals suggests might be done (R. 182) while it remained in

¹⁵ *Confer*, for example, where the officers and directors have, in effect, tried to save the property for themselves [*Consol. Tank Line Co. vs. Kansas City Varnish Co.*, 43 Fed. 204; 205-206]; or where trustees have accepted another inconsistent trust [*Talbot vs. Scott*, 4 Kay & J. (70 Eng. Rep. 139, 140); *Wood, V.C.*]

the hands of the so-called purchasers to whom these trustees had wrongfully attempted to convey it [or of their possible grantees, immediate or remote], would not possibly yield any reasonable prospect of getting a fair price bid on the sale. A purchaser would not be expected to bid a really fair price, simply to buy a law suit. The insular Supreme Court was right, clearly, in saying (R. 121-122):

"It would be anomalous if this court, after having found defendant guilty of having violated the Organic Law, the Corporation Law and its own articles of incorporation, and after having imposed the payment of a fine, and decreed the forfeiture of its articles of incorporation and the dissolution and liquidation, should find itself obligated, for lack of jurisdiction, to cross its arms, leaving the stockholders and directors of such defendant, the real guilty parties of such violations, in complete freedom of action to comply with the decree of this court as and when they might wish."

CONCLUSION

The decision of the Insular Supreme Court ordering the appointment of the Receiver was right. The Circuit Court of Appeals was in error in disturbing this order made by the insular Supreme Court in the exercise of its discretion and its interpretation and application of local Territorial statutes. The writ of certiorari should be granted and the judgment of the Circuit Court of Appeals should be reversed in so far as it finds that the Receiver was "improvidently" appointed, and the order of the insular Supreme Court appointing the Receiver should be affirmed.

Respectfully submitted,

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APPENDIX

APPENDIX

CONSTITUTIONAL AND STATUTORY PROVISIONS

CONSTITUTION:

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States. (Art. IV, Sec. 3, Cl. 2.)

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; * * * shall be the supreme Law of the Land. (Art. VI, Cl. 2.)

No person shall be * * * ; nor be deprived of life, liberty, or property, without due process of law. (Fifth Amendment.)

FEDERAL STATUTES:

(1) The former Organic Act for Puerto Rico, the "Foraker Act" of April 12, 1900, c. 191, 31 Stat. 77 *et seq.*, provided:

Sec. 27. That all local legislative powers hereby granted shall be vested in a legislative assembly * * * designated "The legislative assembly of Porto Rico".

Sec. 32. That the legislative authority herein provided shall extend to all matters of a legislative character not locally inapplicable, including * * * the power to alter, amend, modify, and repeal any and all laws and ordinances of every character now in force in Porto Rico, or any municipality or district thereof, not inconsistent with the provisions hereof.

Sec. 33. That the judicial power shall be vested in the courts and tribunals of Porto Rico as already established and now in operation, including municipal courts, under and by virtue of General Orders, Numbered One hundred and eighteen, as promulgated by Brigadier-General Davis, United States Volunteers, August sixteenth, eighteen hundred and ninety-nine, and including also the police courts established by General Orders, Numbered One hundred and ninety-five promulgated November twenty-ninth, eighteen hundred and ninety-nine, by Brigadier-

General Davis, United States Volunteers, and the laws and ordinances of Porto Rico and the municipalities thereof in force, so far as the same are not in conflict herewith, all which courts and tribunals are hereby continued. The jurisdiction of said courts and the form of procedure in them, and the various officials and attaches thereof, respectively, shall be the same as defined and prescribed in and by said laws and ordinances, and said General Orders, Numbered One hundred and eighteen, and One hundred and ninety-five, until otherwise provided by law: *Provided, however,* That the chief justice and associate justices of the supreme court and the marshal thereof shall be appointed by the President, by and with the advice and consent of the Senate, and the judges of the district courts shall be appointed by the governor, by and with the advice and consent of the executive council, and all other officials and attaches of all the other courts shall be chosen as may be directed by the legislative assembly, which shall have authority to legislate from time to time as it may see fit with respect to said courts, and any others they may deem it advisable to establish, their organization, the number of judges and officials and attaches for each, their jurisdiction, their procedure, and all other matters affecting them.

(2) General Orders, No. 118, as promulgated by Brigadier-General Davis, Military Governor of Puerto Rico, August 16, 1899, provided:

General Orders,
No. 118.

Headquarters Department of Porto Rico.
San Juan, August 16, 1899.

Upon the recommendation of the Judicial Board, the following reorganization and functions of the Judiciary of this Island were approved on August 10th, 1899, and are published for the information and guidance of all concerned:

1. The organization and functions of the Courts of Justice of this Island will, from the 10th inst. undergo reforms in accordance with the following dispositions:

2. There shall be a Supreme Court of Justice with fixed residence in the city of San Juan, composed of a Chief Justice and four Associate Justices who jointly will constitute a Judicial Bench for all civil and criminal business; the court shall also have a prosecuting attorney, one Secretary, two court clerks, one file clerk and taxer of costs, six clerks, one janitor and two Bailiffs.

3. The island is divided into five judicial Districts

By command of Brigadier-General Davis:

W. P. Hall,

Adjutant General.

(3) **Section 3 of Joint Resolution No. 23, approved May 1, 1900, provides in pertinent part (31 Stat. 715, 716; 48 U. S. Code):**

Sec. 3. * * * No corporation shall be authorized to conduct the business of buying and selling real estate or be permitted to hold or own real estate except such as may be reasonably necessary to enable it to carry out the purpose for which it was created, and every corporation hereafter authorized to engage in agriculture shall by its charter be restricted to the ownership and control of not to exceed five hundred acres of land; and this provision shall be held to prevent any member of a corporation engaged in agriculture from being in any wise interested in any other corporation engaged in agriculture. Corporations, however, may loan funds upon real estate security, and purchase real estate when necessary for the collection of loans, but they shall dispose of real estate so obtained within five years after receiving the title: Corporations not organized in Porto Rico, and doing business therein, shall be bound by the provisions of this section so far as they are applicable. (*Emphasis supplied*).

(4) **The present Organic Act for Puerto Rico, the "Jones Law", Act of March 2, 1917, c. 145, 39 Stat. 951 et seq., provides:**

Sec. 2. That no law shall be enacted in Puerto Rico which shall deprive any person of life, liberty, or property without due process of law, or deny to any

person therein the equal protection of the laws.

That no law impairing the obligation of contracts shall be enacted.

That no *ex post facto* law or bill of attainder shall be enacted.

Private property shall not be taken or damaged for public use except upon payment of just compensation ascertained in the manner provided by law.

Sec. 9. That the statutory laws of the United States not locally inapplicable, except as hereinbefore or hereinafter otherwise provided, shall have the same force and effect in Puerto Rico as in the United States, except the internal revenue laws.

Sec. 23. That the Governor of Puerto Rico, within sixty days after the end of each session of the Legislature, shall transmit to the executive department of the Government of the United States, to be designated as herein provided for, which shall in turn transmit the same to the Congress of the United States, copies of all laws enacted during the session.

Sec. 25. That all local legislative powers in Puerto Rico, except as herein otherwise provided, shall be vested in a Legislature . . . designated "the Legislature of Puerto Rico".

Sec. 34. That All laws enacted by the Legislature of Puerto Rico shall be reported to the Congress of the United States, as provided in section twenty-three of this Act, which hereby reserves the power and authority to annul the same.

No bill, except general appropriation bills, shall be passed containing more than one subject, which shall be clearly expressed in its title; but if any subject shall be embraced in any act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be so expressed.

No law shall be revived, or amended, or the provisions thereof extended or conferred by reference to its title only, but so much thereof as is revived, amended, extended, or conferred shall be reenacted and published at length.

Sec. 37. That the legislative authority herein provided shall extend to all matters of a legislative character not locally inapplicable, including power

to create, consolidate, and reorganize the municipalities so far as may be necessary, and to provide and repeal laws and ordinances therefor; also the power to alter, amend, modify, or repeal any or all laws and ordinances of every character now in force in Porto Rico or municipality or district thereof, in so far as such alteration, amendment, modification, or repeal may be consistent with the provisions of this Act.

Sec. 39 [2d Par.] That nothing in this Act contained shall be so construed as to abrogate or in any manner impair or affect the provision contained in section three of the joint resolution approved May first, nineteen hundred, with respect to the buying, selling, or holding of real estate: That the Governor of Puerto Rico shall cause to have made and submitted to Congress at the session beginning the first Monday in December, nineteen hundred and seventeen, a report of all the real estate used for the purposes of agriculture and held either directly or indirectly by corporations, partnerships, or individuals in holdings in excess of five hundred acres.

Sec. 40. That the judicial power shall be vested in the courts and tribunals now established and in operation under and by virtue of existing laws. The jurisdiction of said courts and the form of procedure in them, and the various officers and attaches thereof, shall also continue to be as now provided until otherwise provided by law; *Provided*, however, That the Chief Justice and the Associate Justices of the Supreme Court shall be appointed by the President, by and with the advice and consent of the Senate of the United States, and the Legislature of Puerto Rico shall have authority, from time to time as it may see fit, not inconsistent with this Act, to organize, modify, or rearrange the courts and their jurisdiction and procedure, except the District Court of the United States for Puerto Rico.

Sec. 57. That the laws and ordinances of Puerto Rico now in force shall continue in force and effect, except as altered, amended, or modified herein, until altered, amended, or repealed by the legislative authority herein provided for Puerto Rico or by Act of Congress of the United States; and such legislative

authority shall have power, when not inconsistent with this Act, by due enactment to amend, alter, modify, or repeal any law or ordinance, civil or criminal, continued in force by this Act as it may from time to time see fit.

PUERTO RICO:

(1) The "Act Establishing Quo Warranto Proceedings", approved March 1, 1902 ("Rev. Stats. and Codes of Porto Rico", 1902, Pars. 779-787, pp. 283-284; Comp. of Rev. Stats. and Codes of 1911, Pars. 1319-1327, pp. 268-269), as originally enacted, provided in pertinent part:

Sec. 2. [Par. 780, Rev. of 1902; Par. 1320, Rev. of 1911]. That in case . . . any corporation does or omits any act which amounts to a surrender or forfeiture of its rights and privileges as a corporation or exercises rights not conferred by law: The Attorney General or any Fiscal of the respective District Courts, either of his own accord or at the instance of any individual relator, may present a petition to the District Court of competent jurisdiction, for leave to file an information in the nature of "Quo Warranto" in the name of the People of Porto Rico and if such court shall be satisfied that there is probable ground for the proceeding, the court may grant the petition, and order the information to be filed, and process to issue.

Sec. 6. [Par. 784, Rev. of 1902; Par. 1324, Rev. of 1911]. In case any person or corporation against whom any such petition is filed, or adjudged guilty, the court may give judgment of ouster against such person or corporation from the office or franchise,¹⁶ and fine such person or corporation for usurping, intruding into, or unlawfully holding and executing such office or franchise, and also give judgment in favor of the relator for the costs of the prosecutions: *Provided*, that instead of judgment of ouster from a franchise, the court may fine the person or corpora-

¹⁶ The "Rev. Stats. and Codes" of 1902 (Par. 784, p. 283, last line at the bottom of the page) says "is" [its] "franchise".

tion found guilty in any sum not exceeding five thousand dollars for each offense.¹⁷

(2) **"An Act Establishing The Supreme Court Of Porto Rico As a Court Of Appeals"**, approved March 12, 1903 (Laws of 1903, p. 59; Comp. of Rev. Stats. and Codes of 1911, Par. 1141, p. 241) provides in pertinent part:

Section 1.—That the Supreme Court of Porto Rico shall hereafter be a Court of Appeals and not a Court of Cassation. In its deliberations and decisions, in all cases, civil or criminal, said court shall not be confined to the errors in proceeding (procedure) or of law only, as they are pointed out, alleged or saved by the respective parties to the suit, or as set fourth (forth) in their briefs and exceptions, but in furtherance of justice, the court may also take cognizance of all the facts and proceedings in the case as they appear in the record, and likewise consider the merits thereof, so as to promote justice and right and to prevent injustice and delay.

Section 2.—All the Sections of the Law of Civil Procedure establishing proceedings for appeals on cassation are hereby repealed.

(3) **"An Act To Confer Original Jurisdiction On The Supreme Court Of Porto Rico For The Trial And Adjudication Of Certain Property Claimed By The Roman Catholic Church in Porto Rico"**, approved March 10, 1904 (Laws of 1904, pp. 134-135) provided in pertinent part:

Section 1.—Original jurisdiction is hereby conferred on the Supreme Court of Porto Rico for the trial and adjudication of all questions now existing, or which may arise, between the Roman Catholic

¹⁷By Act No. 37, April 24, 1931 (Laws of 1931, pp. 354-356), Section 6 was amended by inserting a second *proviso* requiring any defendant against whom a judgment has been rendered declaring him "to have usurped any public office or to be unlawfully performing the duties thereof", "immediately" to "retire from said office and cease performing the duties thereof."

Church in Porto Rico and the People of Porto Rico, affecting property rights, whether real or personal or mixed, claimed by either party.

Section 3.—The Supreme Court, for the purpose of such trial and adjudication, shall have the right to issue process for witnesses and to receive and hear testimony, and the procedure in said court shall be the same, as near as may be, as that prescribed for the District Courts of Porto Rico in civil cases, and the Supreme Court shall have full power to enter any and all orders and decrees that may be necessary to a final and full adjudication

Section 5.—Original jurisdiction is hereby also conferred on the Supreme Court of Porto Rico for the trial and adjudication of all questions now existing, or which may arise, between the Roman Catholic Church in Porto Rico and any municipality of Porto Rico, affecting property rights, whether real or personal or mixed, claimed by either party.

[MEMO.—The validity of this Act of March 10, 1904, conferring original jurisdiction on the insular Supreme Court for the purposes designated in the Act, was sustained by the United States Supreme Court in *Ponce vs. Roman Catholic Apostolic Church*, 210 U. S. 296, 303-308].

(4) Act No. 30, **An Act to establish a law of private corporations**, approved March 9, 1911; Pars. 407, *et seq.*, Comp. of Rev. Stats. and Codes of Puerto Rico, 1911, pp. 89-90 [Revision and substantial reenactment of "An Act Regarding Corporations", Laws of 1902, pp. 258 *et seq.*; Rev. Stats. and Codes of 1902, Civil Code, Title II, Secs. 32 *et seq.*, pp. 759 *et seq.*]

Article I. Organization of corporations and revocation of incorporation.

Section 1. Private corporations may be organized by voluntary association of three or more persons, for the purposes and in the manner designated hereunder.

Sec. 2. The object or subjects of corporations organized under this act, may be:

1. The establishment of mercantile or industrial enterprises, which shall be operated and developed

under all forms and within all licit combinations which human intelligence and activity may suggest or permit, without any other limitation than those imposed by the statutes of the United States and the laws of Porto Rico.

2. The establishment of building enterprises for the construction of public and private buildings.

Sec. 3. Every corporation has power.

1. To have succession by its corporate name in perpetuity or for the period mentioned in its articles of incorporation.

2. To sue or to be sued in any court.

3. To have and use a seal, which it may alter at will.

4. To acquire and to hold in any legal manner and to transfer such property, both real and personal as the purposes expressed in the articles of incorporation may require, and to mortgage such property with its franchises: *Provided, however,* That the power of any agricultural corporation [The Act of 1902 reads "any corporation", omitting the word "agricultural". Rev. Stats. & Codes of 1902, *supra*, Civil Code, Sec. 32—(4), p. 759] organized under this act to hold real estate shall be subject to the prohibition contained in section three of the joint resolution of the Congress of the United States, of May first, nineteen hundred.

5. To appoint the officers and agents required by the business of the corporation and to make them reasonable compensation.

6. To make by-laws as to the number of directors, as to the management, regulation and government of its property and affairs and the transfer of its stock subject to the provisions of this act.

7. To dissolve, either voluntarily or by operation of law and in accordance with the provisions of this act.

8. To possess and exercise, subject to the restrictions and liabilities contained in this act and in the Civil Code and its articles of incorporation such incidental powers as are necessary or convenient to the attainment of the object or objects set forth in such articles of incorporation: *Provided,* That the same are not inappropriate to or inconsistent with such

articles of incorporation or with the provisions of this act and of the Civil Code.

Sec. 4. No corporation formed under this act shall be deemed to possess or shall exercise corporate powers except in accordance with the provisions of the preceding section. Neither shall any such corporation transact any banking business in conflict with or opposition to the prescriptions of the statutes of the United States concerning banks.

Sec. 5. Any corporation organized under this Act may be dissolved at the pleasure of the Legislative Assembly who may also, at its pleasure, alter, suspend or repeal its articles of incorporation or any addition or amendment made to the same. Any amendment or repealing act hereafter enacted by the Legislative Assembly shall be binding upon the corporations organized under this act. Such amendment or repeal, however, shall not take away or impair any remedy against any such corporation or its officers for any liability which shall have been previously incurred by it or them. This title and all amendments thereto shall be deemed a part of the charter of every corporation formed hereunder, except so far as the same are inappropriate and inapplicable to the object of such corporation.

Article II. *Formation, Alteration and Dissolution of Corporations.*

Sec. 6. Articles or Incorporation.—That on executing, acknowledging and filing articles of incorporation, in accordance with the next section of this act, three or more persons of full legal capacity may organize a corporation for any lawful purpose or purposes, and any such corporation may conduct a business in Porto Rico and the United States, or any foreign country, and may hold, acquire, mortgage and transfer real or personal property, or maintain one or more offices outside of the Island of Porto Rico, provided such powers are included in the objects mentioned in the certificate of incorporation: *Provided, however,* That it shall not be lawful to organize under this chapter any bank, savings bank, building or loan association, or insurance company: *Provided, further; however:* That the charter of every railroad company, telegraph company, tele-

phone company, canal company, electric light company, turnpike company, or any other company requiring the exercise of the right of eminent domain or any public-service corporation, shall be subject to amendment, alteration or repeal by the Legislative Assembly of Porto Rico, and the charters of such corporations shall expressly so provide; and all such corporations shall be subject to effective regulation, as now or hereafter may be provided by law.

The right and power to purchase, construct, lease and operate railroads, street railways, and the business of developing, transmitting and distributing electricity to the public and private consumers, and any other lawful business incident to, connected with, or which shall promote the main business of said corporation, may be included in one charter.

Sec. 7. The articles of incorporation must be subscribed by each of the incorporators and must be acknowledged before a notary or other officer authorized to take and certify acknowledgements. They shall set forth:

1. The name of the corporation; but no name shall be assumed already in use by any other corporation, or so nearly similar thereto as to lead to confusion or uncertainty.

2. The location including the town or city, street and number; if there be any, of its principal office in the Island of Porto Rico.

3. The period, if any, limited for the duration of the corporation.

4. The object or objects for which the corporation is formed.

5. The amount of the total authorized capital stock of the corporation, which shall not be less than two thousand dollars; the number of shares into which the same is divided, and the par value of each share, and the amount of paid-in capital, with which it shall commence business, which shall not be less than one thousand dollars.

6. The names and post-office addresses of the incorporators and the number of shares subscribed for by each and the amount of their subscription paid in by each.

7. Any provisions which the incorporators may choose to insert for the regulation of the business and the conduct of the affairs of the corporation, or for creating, defining, limiting and regulating the powers of the corporation directors or of the stockholders, provided that such provision or provisions shall be consistent with this act.

Article VI.—*Dissolution*

(432). Sec. 26. Whenever in the judgment of the board of directors it shall be deemed advisable that a corporation organized under this act shall be dissolved, the directors within ten days after the adoption of a resolution to that effect by a majority of them at any meeting called for that purpose, of which meeting each director shall have received at least three days' notice, shall cause notice of the adoption of such a resolution to be mailed to each stockholder residing in Porto Rico or in the United States, and also beginning within the said ten days cause a like notice to be published in a newspaper of the Island of Porto Rico four weeks successively, at least once a week, next preceding the time appointed for the same, of a meeting of the stockholders to take action upon a resolution so adopted by the board of directors, which meeting shall be held between the hours of 10 o'clock in the forenoon and 3 o'clock in the afternoon of the day so named, and may on the day so appointed be adjourned by the consent of a majority in interest of the stockholders present from time to time for not less than eight days at any one time, of which adjourned meeting, notice in the said newspaper shall be given. If at any such meeting two-thirds in interest of all stockholders shall consent that a dissolution shall take place and shall signify their consent in writing, such consent, together with a list of the names and residences of the directors and officers certified by the president and secretary or treasurer, shall be filed in the office of the Secretary of Porto Rico, who, on being satisfied by due proof that the requirements have been complied with, shall issue a certificate that such consent has been filed, and the board of directors shall cause such certificate to be published four weeks successively, at

least once a week in a newspaper published in the Island of Porto Rico, and upon filing in the office of the Secretary of Porto Rico of an affidavit that said certificate has been so published, the corporation shall be dissolved and the board of directors shall proceed to liquidate the business and affairs of such corporation. Whenever all the stockholders shall consent in writing to a dissolution, no meeting or notice thereof shall be necessary, and the Secretary of Porto Rico shall forthwith issue a certificate of dissolution on filing such consent in his office, which certificate shall be published as above provided.

(433). Sec. 27.—*Corporate existence pending dissolution.* All corporations, whether they expire through the limitation contained in articles of incorporation or are annulled by the Legislature, or otherwise dissolved, shall be continued as bodies corporate for the purpose of prosecuting and defending suits by or against them, and of enabling them to settle and close their affairs, to dispose of and convey their property and to divide their capital; but not for the purpose of continuing the business for which they were established.

(434). Sec. 28.—*Directors as trustees pending dissolution.*—Upon the dissolution in any manner of a corporation, the directors shall be the trustees thereof pending the liquidation, with full power to settle the affairs, collect the outstanding debts, sell and convey the property and divide the moneys and other property among the stockholders, after paying its debts, so far as such moneys and property shall suffice. They shall have power to meet and to act under the bylaws of the corporation, and, under regulations to be made by a majority of the said trustees, to prescribe the terms and conditions of the sale of such property, or may sell all or any part for cash, or partly on credit, or take mortgages and bonds for part of the purchase price for all or any part of the said property. In case of a vacancy or vacancies in the board of directors of such corporation existing at the time of dissolution or occurring subsequently thereto, the surviving directors or director shall be the trustees or trustee thereof, as the case may be, with full power to settle the affairs, collect the out-

standing debts, sell and convey the property and divide the moneys and other property among the stockholders, after paying its debts, as far as such moneys and property shall enable them, and to do and perform all such other acts as shall be necessary to carry out the provisions of this Act relative to the winding up of the affairs of such corporation and to the distribution of its assets. (As amended by Section 12 of Act No. 24, approved April 13, 1916; Laws of 1916, p. 73).

(435) Sec. 29.—*Powers and liabilities of Trustees in Liquidation.* The directors constituted trustees as aforesaid shall have power to sue for and recover the aforesaid debts and property by the name of the corporation and shall be suable by the same name, or in their own names or individual capacities for the debts owing by such corporation, and shall be jointly and severally responsible for such debts to the amount of the money and property of the corporation which shall come to their hands or possession as such trustees.

(436) Sec. 30.—*Judicial appointment of liquidators.* When any corporation shall be dissolved in any manner whatever, the district court having jurisdiction of the place where its principal office in the Island of Porto Rico is situated, on application of any creditor or stockholder, may at any time either continue the directors as trustees as aforesaid, or appoint one or more persons to be liquidators of such corporation to take charge of the assets and effects thereof, to collect the debts and property due and belonging to the corporation, with power to prosecute and defend in the name of the corporation, or otherwise, all suits necessary or appropriate for the purposes aforesaid, or to appoint an agent or agents under them, or to do other acts that might be done by such corporation if in being that may be necessary for the final settlement of its unfinished business, and the powers of such trustees or receivers may be continued so long as the courts shall think necessary for such purpose.

(437) Sec. 31. *Distribution of Assets by Trustees or Liquidators.* The said trustees or liquidators shall pay ratably, so far as its assets shall enable them.

all the creditors for the corporation who prove their debts in the manner directed by the court or by the law of civil procedure. If any balance remain after the payment of such debts and necessary expenses, the same shall be distributed among the stockholders.

(438) Sec. 32. *Pending Suits Not Affected by Dissolution.* Any suit now pending or hereafter to be begun against any corporation which may become dissolved before final judgment; shall not lapse by reason of such dissolution; but no judgment shall be entered in any such action except upon notice to the trustees or liquidators of the corporation.

(439) Sec. 33. *Final Decree in Liquidation Proceedings.* A copy of every judicial decree or judgment in proceedings for liquidation had after the dissolution of a corporation shall be filed by the clerk of the court in the office of the Secretary of Porto Rico and a minute thereof shall be made by the Secretary on the articles of incorporation and in the index thereof.

(5) *Acts Nos. 33 and 47; Special Session, 1935.*

Act No. 33, approved July 22, 1935, entitled

o "An Act To Confer Upon The Supreme Court of Puerto Rico Exclusive Original Jurisdiction In *Quo Warranto* Proceedings That The Government Of Puerto Rico May Institute For Violations Of The Provisions Of Section 752, Title 48, United States Code, And For Other Purposes",

provides in pertinent part (Laws of 1935, Special Session, p. 418):

Section 1.—There is hereby conferred upon the Supreme Court of Puerto Rico exclusive original jurisdiction to take cognizance of all *Quo Warranto* proceedings that the Government of Puerto Rico may hereafter institute for violations of the provisions of Section 752, Title 48, United States Code, and for that purpose it is provided that the violation of said provisions shall constitute sufficient cause to institute a proceeding of the nature of *Quo Warranto*.

Act No. 47, approved August 7, 1935, Laws of 1935, Special Session, pp. 530-536, amends Sections 2 and 6 of the *Quo Warranto* Law of March 1, 1902 [*ante*, pp. 34-35; Sec. 6 already amended by the Act of 1931, Footnote 17, *ante*,

p. 35, amendment concerning public offices, immaterial here], so as to read in/pertinent parts:

Section 2.—In case any person should usurp, or unlawfully hold or execute any public office * * * , or any corporation does or omits any act which amounts to a surrender or forfeiture of its rights and privileges as a corporation, or exercises rights not conferred by law, the Attorney General, or any prosecuting attorney of the respective district court, either on his own initiative or at the instance of another person, may file before any district court of Puerto Rico a petition for" [leave to file]¹⁷ "an information in the nature of *Quo Warranto* in the name of The People of Puerto Rico; or whenever any corporation, by itself or through any other subsidiary or affiliated entity or agent, exercises rights, performs acts, or makes contracts in violation of the express provisions of the Organic Act of Puerto Rico or of any of its statutes, the Attorney General or any district attorney, either on his own initiative or at the instance of another person, may file before the Supreme Court of Puerto Rico a petition for" [leave to file]¹⁸ "an information in the nature of *Quo Warranto* in the name of the People of Puerto Rico; and if from the allegations such court shall be satisfied that there is probable ground for the proceeding, the court may grant the petition and order the information accordingly. * * *

"When any corporation by itself or through any other subsidiary or affiliated entity or agent is unlawfully holding, under any title, real estate in Puerto Rico, The People of Puerto Rico may, at its option, through the same proceedings, institute in its behalf the confiscation of such property, or the alienation thereof at public auction, within a term of not more than six months counting from the date on which final sentence is rendered.

"In every case, alienation or confiscation shall be through the corresponding indemnity as established in the law of eminent domain."

Section 6.—In case any person or corporation

¹⁸ Spanish: "una solicitud para que se instruya información de la naturaleza del *quo warranto*".

against whom any such petition is filed, is adjudged guilty, the court may give judgment of ouster against such person or corporation from the office or franchise to which the petition refers, and fine such person or corporation for usurping, intruding in, or unlawfully holding and executing such office or franchise, and also give judgment in favor of the defendant for the costs of the prosecutions; * * * *

Whenever, in the opinion of the court, it is satisfactorily established that the corporation or corporations have performed acts or exercised rights not conferred by law, or in violation of the express provisions thereof, the judgment entered shall, in case the defendant is a domestic corporation, decree the dissolution thereof and the prohibition to continue doing business in the country; and in the case of a foreign corporation, the nullity of all acts done and contracts made by the defendant corporation or entity; and in addition, said judgment shall decree the cancellation of every entry or registration made by the said corporations in the public registries of Puerto Rico; and when the decree of nullity affects real property and The People of Puerto Rico has chosen to confiscate it or orders it sold at public auction, the final judgment shall fix the reasonable price to be paid for said property. For these purposes, the just value of the property subject to alienation or confiscation shall be fixed in the same manner as it is fixed in cases of condemnation proceedings.

(6) **Code of Civil Procedure of Puerto Rico (Edition of 1933).**
Section 103.—(426 Cal.)¹⁹ The complaint must contain:

1. The title of the action, the name of the court and district in which the action is brought, and the names of the parties to the action.

¹⁹ The references, here and in other sections of this Code, are to the sections of the California Code of Civil Procedure, upon which the Puerto Rico Code is modelled. See "Rule 1" of Act No. 6, approved March 31, 1933, "Establishing Rules for the Printing of the Code of Civil Procedure of Puerto Rico"; Laws of 1933, p. 194.

2. A statement of the facts constituting the cause of action, in ordinary and concise language.

3. A demand of the relief which the plaintiff claims. If the recovery of money or damages be demanded, the amount thereof must be stated.

Section 122.—(453 Cal.) In the construction of a pleading, for the purpose of determining its effect, its allegations must be liberally construed, with a view to substantial justice between the parties.

Section 142.—(475 Cal.) The court must, in every state of an action, disregard any error or defect in the pleadings or proceedings which does not affect the substantial rights of the parties, and no judgment shall be reversed or affected by reason of such error or defect.

Chapter III.—Receivers

Section 182.—(564 Cal.) A receiver may be appointed by the court in which an action is pending or has passed to judgment,²⁰ or by the judge thereof:

1. In an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject any property or fund to his claim, or between partners or others jointly owning or jointly interested in any property or fund, on the application of the plaintiff, or of any party whose right to or interest in the property or fund, or the proceeds thereof, is probable, and where it is shown that the property or fund is in danger of being lost, removed, or materially injured.

2. After judgment, to carry the judgment into effect.

3. After judgment, to dispose of the property according to the judgment, or to preserve it during the pendency of an appeal, or in proceedings in aid of execution, when an execution has been returned unsatisfied, or when the judgment debtor refuses to apply his property in satisfaction of the judgment.

4. In the case when a corporation has been dissolved, or is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights.

²⁰ The California Code (Sec. 564) did not contain the words "*or has passed to judgment*". [*Confer Respondents' "Statement on Appeal", R. 157*].

5. In all other cases where receivers have heretofore been appointed by the usages of courts of equity.

Section 191.—(580 Cal.) The relief granted to the plaintiff, if there be no answer, cannot exceed that which he shall have demanded in his complaint; but in any other case, the court may grant him any relief consistent with the case made by the complaint and embraced within the issue.

Section 348.—(1049 Cal.) An action is deemed to be pending from the time of its commencement until its final determination upon appeal, or until the time for appeal has passed, unless the judgment is sooner satisfied.

(7) Civil Code of Puerto Rico (Edition of 1930).

Section 263.—The following are immovables:

1. Lands, buildings, roads and structures of every kind adherent to the soil.

2. Trees, plants and ungathered fruits, while they are not separated from the land or form an integral part of an immovable.

3. Everything attached to an immovable in a fixed manner, in such a way that it cannot be separated from it without breaking the matter, or causing injury to the object.

4. Statues, reliefs, paintings, or other objects of use or ornament, placed in buildings or on lands or tenements by the owner thereof in such a manner that they become attached permanently to the property.

5. Machinery, vessels, instruments or implements intended by the owner of the tenement for the industry or works that he may carry on in any buildings or upon any land and which tend directly to meet the needs of the said industry, or works.

6. Animal houses, pigeon-houses, bee-hives, fish-ponds or breeding places of a similar nature, when the owner has placed or preserves them with the intention of keeping them attached to the tenement and forming a permanent part thereof.

7. Manures or fertilizers intended for the cultivation of the land, when upon the place where they are to be employed.

8. Mines, quarries and slag lands, while the matter thereof forms part of the beds, and waters, either running or stagnant.

9. Docks and structures which, though floating, are intended by their nature and the object for which they are designed, to remain at a fixed place in any river or lake, or on any shore.

10. Administrative concessions for public works, and servitudes and other real rights, attached to immovables.